IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 900 of 2001 (M/B)

1. Colts Cement Pvt. Ltd.,
through its Managing Director Sri C.S. Chauhan,
R/o Village Kamaluwaganga,
Nar Singh Talla, Tehsil Haldwani,
District Nainital.
2. C.S. Chauhan S/o Sri B.S. Chauhan,
R/o 1 Southern Avenure,
Maharani Bagh, New Delhi. …… Petitioners

Versus

1. U.P. Finance Corporation,
Head Office 14/88 Civil Lines,
Kanpur through its Managing Director.
2. Regional Manager,
U.P. Finance Corporation,
Bedi Bhawan, Opposite Judges Court,
Haldwani, Nainital. ….. Respondents

Mr. L.P. Naithani, Senior Counsel with Mr. Gopal Narain, Advocate for the petitioners.
Mr. Naresh Pant, Advocate for the respondents.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. L.P. Naithani, Senior Counsel with Mr. Gopal Narain, Advocate for the petitioners.

Mr. Naresh Pant, Advocate for the respondents.

They are heard.

2. The petitioners have filed this writ petition for the following reliefs:

> "(I) Issue a writ order or direction in the nature of certiorari quashing the orders dated 12.09.2001, 21.9.2002 and 3.10.2001 passed by the respondents (annexure no. 15, 16 and 17 respectively to this writ petition).
>
> (II) Issue a writ order or direction in the nature of mandamus commanding the respondents to persist with

the OTS and permit the petitioners to sell the assets of the Company for the purpose of making good the peyment of loan.

(III) Issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the present case.

(IV) To award the cost of present writ petition in favour of the petitioner."

3. On 15.07.2003, following order was passed in the writ petition:

"Heard learned counsel for the petitioner as well as learned counsel for the U.P.F.C.

After OTS, there remains dispute relating to some amount, which according to learned counsel for the petitioner is required to adjusted. Learned counsel for the UPFC submits that after the OTS because of default of amount settled in OTS, interest has increased, therefore, a sum of Rs. 11,00,000 (Rupees Eleven Lakhs only) still remains outstanding against the petitioner. In view of rival contention of the parties, factual dispute is there, which can not be gone into in a petition under Article 226 of the Constitution of India. However, it is provided that the petitioner shall sit with the Regional Manager, UPFC and shall settle all the dispute. The date for the meeting shall be fixed by the Regional Manager and the minutes of the meeting shall be filed before this Court on accounting alongwith supplementary counter affidavit.

List after a month."

4. The grievance of the learned senior counsel for the petitioner is that the respondents have not complied with their part in the matter as was directed by this Court vide order dated 15.07.2003.

5. Mr. Naresh Pant, the learned counsel for the respondents, referring to the counter affidavit filed on their behalf, submits that the petitioners themselves are to be blamed for not fulfilling their part under the O.T.S.

6. Be that as it may, the fact remains that the factual disputes between the parties, which are of serious nature, cannot be gone into in a petition under Article 226 of the Constitution of India.

7. We, therefore, leave it open to the petitioners to make a representation to the respondents for the redressal of their surviving grievances, if any, and it goes without saying that if such a representation is made by the petitioners, the respondents shall consider and decide the same by passing a speaking order within a period of two months from the date of submission of the representation after providing an opportunity of hearing to the petitioners.

8. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

18.05.2006 18.05.2006

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